PUBLIC PROSECUTOR

v.

MOHD. SALLEH MOHD. SAAD

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[CRIMINAL TRIAL NO. 14 OF 1986]
29 JULY 1990

CRIMINAL PROCEDURE: *Drug trafficking - Cautioned statement - Purported question and purported answer - Record of Information missing - Failure to record answers in diary - The existence of other shadowy figures - Evidence Act s. 27.*

The accused was charged with two counts of trafficking in cannabis. At the end of the prosecution's case, the Court acquitted him on the second charge. As to the first charge, the Court found that a *prima facie* case had been made and called for the defence. The accused gave his evidence on oath in respect of the first charge and called his daughter N as his witness.

In his evidence, the accused said that PW3 had questioned him "Di mana ada ganja?" several times, to which he answered "Itu hutan semak belakang". The accused denied that the question that was posed to him was "Mana hang ada simpan ganja?" and he also denied that he had said in reply to that purported question thus "Ganja saya ada simpan di semak di belakang rumah"; there was also the question of whether the accused led the police to the 3 spots where the cannabis was discovered.

Held:

[1] The failure of PW3 to state in his police reports, the alleged answer by the accused, based on its importance, raises a reasonable doubt as to the version given by the prosecution; in addition, neither the diary of the investigating officer nor the cautioned statement of the accused contained any reference to the answer as alleged by the prosecution.

[2] In the course of the trial, during cross-examination PW3 said that the note which he made on a piece of paper of the question he had asked and the answer given by the accused had been lost when he shifted office to another room. The Court found it hard to believe that a record of information arising under s. 27 of the Evidence Act and relating to the most important aspect of the case could have been carelessly kept and is now lost.

[3] The defence of the accused was consistent with the cautioned statement produced by the prosecution as part of its case.

[4] The Court also took into consideration the existence of other shadowy figures whose names have been adduced in evidence. The evidence adduced by both the prosecution and the defence show that these shadowy figures may have played a role in the hiding and trafficking of the cannabis that had been seized in this case. This aspect of the case contributed to the reasonable doubt created in the prosecution's case.

[Accused acquitted and discharged.]

Case referred to:
Sum Kum Seng v. PP [1981] 1 MLJ 244

Legislation referred to:
Dangerous Drugs Act 1952, s. 37(da)(vi)
Evidence Act 1950, s. 27

For the public prosecutor - Tun Abdul Majid bin Tun Hamzah, Deputy Public Prosecutor
For the accused - Kumaraendran; M/s. Kumar & Co.

JUDGMENT

KC Vohrah J:

There were two charges against the accused for trafficking in cannabis but at the close of the case for the prosecution I acquitted him on the second charge which concerned some 3477 grammes of cannabis discovered by a dog which has been brought in by the police. Save that this quantity of *cannabis* was found at the back of his house there was no nexus between the accused and the said quantity.

As for the first charge the prosecution evidence was that the accused had informed one ASP Nor Rashid that he had kept *cannabis* in the bushes behind the house and he had led the police to 3 spots where various quantities of *cannabis* were discovered. The evidence however showed that one sack containing *cannabis* was not discovered at any of the 3 spots and I therefore amended the quantity of drugs in the 1st charge to reflect that and it reads as follows:

> Bahawa kamu pada 28 Disember, 1985 jam lebih kurang 1.30 pagi di kawasan rumah tanpa nombor di Kampong Bukit Kechik, Simpor, Sungai Petani, di dalam Daerah Kuala Muda, di dalam Negeri Kedah telah di dapati mengedar dadah merbahaya, iaitu sebanyak 3048.9 gram ganja, oleh itu kamu telah melakukan kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Merbahaya (Pindaan 1983) dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

The case for the prosecution was that before the accused led the police to the discovery of the **cannabis** at the 3 spots he was asked by ASP Nor Rashid (PW3) to let him know where he had kept **cannabis** and he had answered, "Ganja saya ada simpan dalam semak di belakang rumah." ("Ganja I have kept in the bushes at the back of the house".)

In his evidence ASP Nor Rashid (PW3) stated that on 28 December 1985 at 1.15 a.m. he and a group of 8 police personnel including Inspector Sukiman (PW4) and Detective Corporal Maidin (PW5) went to an unnumbered house at Kampong Bukit Kechil, Simpor, Sungai Petani. The group of 8 also included Inspector Hassan bin Sernek, the investigating officer of the case, now deceased. The house had barbed wire fencing surrounding it and within the compound by the side of this house was a small house.

ASP Nor Rashid said that on entering the compound of the big house he instructed Inspector Sukiman and Detective Corporal Maidin to accompany him and he instructed the rest to surround the house. ASP Nor Rashid together with his two officers then went to the back of the big house and knocked at its kitchen door. The door was opened by the accused and ASP Nor Rashid proceeded to search the house but nothing incriminating was found. Inside the house the ASP saw the wife, the daughters (Norhayati and Noraini) of the accused, a baby and one Marzuki bin Hashim who was married to Norhayati.

After the search within the house the ASP brought the accused through the kitchen door to the outside compound.

Inspector Sukiman and Corporal Maidin substantially corroborated the evidence of ASP Nor Rashid as regards the search in the house and the bringing of the accused to the compound of the house. They together with ASP Nor Rashid denied that ASP Nor Rashid then brought the accused outside to examine a car after which they brought him back into the house, took his identity card whereupon a police personnel came in and said, "Tuan! Saya ada jumpa benda di belakang rumah." ("Sir, I have discovered the thing at the back of the house.")

ASP Nor Rashid said that he interrogated the accused outside the house and requested him to let him know where he kept ganja ("Saya tanya Salleh supaya memberitahu saya di mana dia ada simpan ganja") and that the accused gave one answer. Under cross-examination he said he repeated that one question several times - 8 to 10 times for 5 to 10 minutes. He said the accused replied, "Ganja ada saya simpan dalam semak di belakang rumah." ("I have kept ganja in the bushes at the back of the house").

As regards the interrogation of the accused, Inspector Sukiman and Corporal Maidin did admit under cross-examination that ASP Nor Rashid questioned the accused several times and that the questions varied and they agreed that the accused did respond to the questions. They maintained the accused did reply, "Ganja ada saya simpan dalam semak di belakang rumah" in response to the question, "Mana hang ada simpan ganja?"

Continuing with the evidence of ASP Nor Rashid - he said that at about 1.25 a.m. or 1.30 a.m. the accused then showed the general direction of the bushes and led him to the bushes at the back of the house and showed him a spot. There he discovered 2 plastic bags which contained small pieces of yellow paper and **cannabis.** According to the Government Chemist, PW2, the **cannabis** in these 2 bags weighed 209 grammes.

ASP Nor Rashid said that after the first discovery the accused brought him to a spot 50 feet away and there he discovered a "Nespray tin" and 3 bundles, all containing cannabis. The Government Chemist testified that the cannabis in the Nespray tin and the 3 bundles came to 556.7 grammes.

ASP Nor Rashid also stated that he discovered a sack with the imprint "Risda" near this second spot and the sack contained 2,852 grammes of cannabis according to the Government Chemist. As stated earlier I disregarded the cannabis in this sack for the purposes of the first charge since the evidence was that the accused did not lead to its discovery.

ASP Nor Rashid also stated that after the discovery at the second spot the accused brought him to another spot, the third spot, and there he discovered one plastic bag which contained, according to the Government Chemist, 2283.2 grammes of cannabis. ASP Nor Rashid said that he then brought the accused to an open space by the side of the house. He saw the rest of his team there together with Marzuki, one Md. Rashid bin Bakar and one Rosli, the last two having been seized from the small house.

Inspector Sukiman and Corporal Maidin gave evidence to the same effect as regards the discovery of cannabis at the 3 spots; they said the accused led ASP Nor Rashid to the 3 spots.

All the above quantities of cannabis discovered at the 3 spots relate to the first charge.

As regards the second charge which I found not proved at the close of the case for the prosecution the evidence of ASP Nor Rashid was that he called for a dog unit which arrived at the scene at about 3.15 p.m. According to the dog handler PW7 the dog he handled brought him to a spot where were discovered 2 plastics bundles of cannabis (which the Government Chemist said weighed 3,477 grammes).

ASP Nor Rashid said that he went to the spot and then he instructed police photographer Constable Abdul Hadi whom he had summoned through his walkie talkie from Sungai Petani Police Headquarters as soon as he (the ASP) had arrived at the accused's house to take photographs of all the spots where **cannabis** had been discovered. Abdul Hadi said he arrived at the scene at 1.30 a.m. and he confirmed taking photographs at about 3.45 a.m. on the instruction of ASP Nor Rashid.

ASP Nor Rashid said at about 4a.m. he went back to the Sungai Petani Police Station and he brought with him all the exhibits that had been seized at the scene and he took with him the accused, his son-in-law Marzuki and Md. Rashid. He said that he made a police report (P15) at about 5.20 a.m.

The prosecution produced the investigation diary (P16) of Inspector Hassan bin Sernek who has since died. He was the investigating officer of the case. Although he had accompanied the police party led by ASP Nor Rashid for the raid that morning, his diary (P16) did not, however, state that the accused confessed to having kept the **cannabis** in the bushes nor that this was in answer to a question by ASP Nor Rashid.

The prosecution also relied on a cautioned statement made by the accused but nowhere in that statement is there any admission by the accused that he had confessed to the police that he had kept **cannabis** at the back of the house or that he brought the police to the 3 spots where the various quantities of **cannabis** were discovered. The statement mentioned that the police searched the compound of his house and found a plastic bag (with the imprint "Risda") containing **cannabis** and that the police later found a "Nespray" tin containing **cannabis**.

At the close of the case I found on the 1st charge, on a *prima facie* basis, that the primary facts as testified to by ASP Nor Rashid, Inspector Sukiman and Corporal Maidin and which are not inherently incredible, showed that the accused had made a statement that he had kept **cannabis** in the bushes at the back and that he led the police to the discovery in the bushes at the back of the house of various quantities of **cannabis** weighing altogether 3049.9 grammes at 3 spots. I considered that the cautioned statement made by the accused and relied upon by the prosecution could be better considered after defence was made.

The primary facts established possession on the part of the accused of the various quantities of **cannabis** and the knowledge that he knew the various quantities of the substance that were hidden at the 3 spots were **cannabis** (ganja). Under s. 37(da)(vi) of the Dangerous Drugs Act 1952 he is presumed in view of the quantity of **cannabis** involved to have trafficked in the **cannabis** until the contrary is proved.

The accused elected to give his evidence on oath in respect of the 1st amended charge and called his daughter Norhayati as his witness.

He denied that as a result of ASP Nor Rashid asking him whether he had kept **cannabis** he had told ASP Nor Rashid that he had kept **cannabis** in the bushes behind the house. And he denied leading the police to the discovery of the **cannabis**.

He said that when the police knocked at the back door of his house his son-in-law, Marzuki bin Hashim, had requested him not to open the door as he told him that he had **cannabis** at the back in the bushes.

The accused said that he was questioned by ASP Nor Rashid two or three times as to where **cannabis** was kept and that he had replied that it was in the bushes at the back and had indicated with a movement of his head its direction. He said that ASP Nor Rashid went away and returned 15 minutes later with a sack which had the chop of "Risda".

In giving his evidence he said that he worked as a lorry driver with Risda, a statutory body, in Sik, about 36 away from his house at Kg Bukit Kechil, Simpor. On Thursday afternoon on 26 December 1985 (Kedah having Thursday as half working day and Friday as holiday) he returned home to his family. The next day his daughter, Norhayati, her child and her husband Marzuki bin Hashim came to the house to spend the night there. They had dinner at 8p.m. and at 10 p.m. they went to bed, he and his wife sleeping in the room which was on the ground floor. His daughter, Norhayati, confirmed that she and her husband went to the house on Friday and spent the night there. She said after dinner at 9p.m. they went upstairs to sleep at 10 p.m.

The accused said that at about 1.15 a.m. on 28 December 1985 he heard knocking at the back door and shouts of "Polis! Polis! Buka Pintu!". Before he could open the door Marzuki came down and told him not to open the door as it was the police. He asked Marzuki why he should not open the door and Marzuki replied that he was afraid as he had ganja at the bushes at the back. The accused subsequently opened the door and ASP Nor Rashid, Inspector Sukiman, Corporal Maidin and others whom he could not recognise came in. ASP Nor Rashid told him that he wished to search the house for **cannabis**. The police then searched the downstairs portion of the house, then the upstairs area but found nothing; and then they came back to the downstairs area when ASP Nor Rashid recovered a shotgun from his room after which he was taken out of the house to his car and the car searched. Nothing was found and he was brought back to his house where he was asked for his identity card. At that time, he said, Norhayati, his daughter was present. He said that then a member of the police team came in and informed ASP Nor Rashid, "Tuan! Saya ada jumpa benda di belakang semak".

Norhayati substantiated his story of the search in the house, the taking away of the gun, the search of the car and the return of the party to the house, the obtaining of the identity card by ASP Nor Rashid from the accused. She also said that after being woken up by the knocking at the door but before the police came in she saw her husband, Marzuki, go downstairs and whisper something to her father, the accused, and she also said that at the time when the accused gave ASP Rashid his identity card a police personnel came in and said "Tuan ada benda di belakang". Then, she said, the police went out; she went upstairs to put her baby to sleep. Norhayati was not shaken in her evidence.

The accused said that he was brought out of the house through the back door followed by Marzuki. He said he saw Md. Rashid and Rosli when he came out of the house. He stated that ASP Nor Rashid questioned him, "Di mana ada ganja?" two or three times. At that time his hands were cuffed to the back and he replied, "Itu hutan semak belakang". He said that he showed the direction with a movement of his head and ASP Nor Rashid then left the place in the direction of the bushes and about 15 minutes later he came back with a plastic sack imprinted with the word "Risda".

The accused denied that ASP Nor Rashid had asked him "Mana Hang ada simpan ganja?" He denied and he replied "Ganja saya ada simpan di semak di belakang rumah."

He said he was brought to the open space where he remained for an hour after which he saw a dog unit arrive. He said, confirming the prosecution evidence, that Rosli then escaped from that place. He also said he did not accompany the police photographer towards the bush area.

He stated that he was brought to the Sungai Petani Police Station and at 10.30 a.m. that morning he gave a cautioned statement. The evidence of PW8 Inspector Osman shows that although the date shown in the cautioned statement was 28 December 1985 it was recorded from the accused on 29 December 1985; thus the accused was mistaken about the date when it was recorded. The accused said that he stood by what he stated in the cautioned statement and in the statement the only connection it would appear he had with any **cannabis** was that 2 weeks before the raid one Hassan had approached him for him to sell **cannabis** and he refused to do so.

The accused also said that Rosli, his nephew, and his 3 or 4 brothers lived in the small house beside his house within the fenced up area and they had the use of that land as one of them was part owner of the land. He also said that there was a well within the fenced up area which was used by those in the kampong and who lived on the other side of the fence; they could use the ladders placed on either side of the fence to go to and from the land. He then informed the Court that one Bakri bin Khamis who is in the Alor Setar prison awaiting trial on a drug trafficking used to make use of the ladders over the fence to get to his compound.

In evaluating the defence I have to consider the totality of the evidence adduced in the case including the cautioned statement of the accused which was adduced not by the defence but by the prosecution as part of its case.

The issue is whether Inspector Nor Rashid asked the accused, "Mana hang ada simpan ganja?". Whether the accused replied, "Ganja saya ada simpan dalam semak di belakang rumah". Whether the accused led ASP Nor Rashid to the 3 spots as described by the prosecution where the various quantities of **cannabis** which were produced in Court were discovered?

The accused had stated that ASP Nor Rashid did not ask him where he had kept the ganja but there was a question which was posed 2 or 3 times, "Di mana ada ganja?" He said he then showed them the direction with a movement of the head towards the back of the house (as his hands were cuffed to the back) and he also said, "Itu hutan semak belakang." ASP Nor Rashid was, however, adamant that he had repeatedly asked the question as to where the accused had kept the **cannabis** and that there was no other different question asked and that at the end the reply of the accused was that he had kept the ganja at the bushes at the back of the house. He said he questioned the accused with this one single question for 8 to 10 times and it took 5 to 10 minutes before the accused responded. I find all this evidence hardly probable. The version of Inspector Sukiman (PW4), however, accords more with the natural course of human conduct - he said ASP Nor Rashid did ask other questions. However, he said, he could not recall them nor did he know if the other questions were connected with the whereabouts of the **cannabis**. Corporal Maidin (PW5) admitted other questions were asked among which were "Where are the drugs?" and "Who brought the drugs?". Both Inspector Sukiman and Corporal Maidin were positive that the ASP Nor Rashid did ask the accused where he had kept the drug and that the accused did answer that he had kept them in the bushes at the back. Why then was there a need for ASP Nor Rashid to give an improbable version of what had taken place? Were the versions of PW4 and PW5 given under cross-examination not a more commonsensical response to what was obvious - that

other questions must have been asked during the interrogation which according to evidence lasted some time; that questions other than the one question that all of them reported as having been asked, must surely have been asked? That other answers by the accused must have been made? Then the question is, have not all the witnesses embellished their evidence? Was the question allegedly asked by ASP Nor Rashid really asked? Was the incriminating answer allegedly given by the accused really given? Or the question and answer carefully composed to incriminate the accused?

Now ASP Nor Rashid made a police report at 5.20 a.m. the same morning as the raid, but in the police report he merely stated that the accused showed where the drugs were. He had every reason, being a senior police officer, to realise the importance of the statement of the accused under s. 27 of the Evidence Act 1950 and his own question preceding the answer and yet the question and the answer were not recorded in the police report. Again nowhere in the investigation diary of the late Inspector Hassan is it stated that ASP Nor Rashid had told Inspector Hassan about the accused's statement which led ASP Nor Rashid to the discovery of the **cannabis**, merely that ASP Nor Rashid had told him that the accused showed him the place where **cannabis** was discovered. The point is that Inspector Hassan was the investigating officer of the case, he was present at the raid itself and he was aware of the **cannabis** discovered there; and the alleged question and the alleged answer, if they had been made, would have struck him as being very important and he would have prudently recorded them in his investigation diary. The evidence of the accused is that he did indicate with a movement of his head the general direction of bushes at the back and this was because he had heard his son-in-law Marzuki say, as the police were knocking at the door, that the **cannabis** was kept at the back in the bushes by him. Thus the accused did point out the area and what he said he did coincides with the police report of ASP Nor Rashid that the accused showed where the **cannabis** was. In connection with the accused's story that Marzuki told him of the presence of the **cannabis** there is unchallenged evidence that Marzuki is presently being detained at Pulau Jerajak for involvement with the seizure of the drugs in this case and it may well have been that Marzuki told the accused about the **cannabis** being at the back of the house.

Then again during cross-examination ASP Nor Rashid revealed that he had made a note on a piece of paper of the question he asked and the answer given by the accused. He said he did the recording when he went back to the station, the same day of the raid. I am aware there is no strict necessity at law to give the actual words used by an accused in supplying the information that led to the discovery of a fact or thing (see *Sum Kum Seng v. PP* [1981] 1 MLJ 244) - a record of the words is not strictly necessary - but here apparently a record was made and it is now lost. ASP Nor Rashid said that he discovered it was lost when he shifted office to another room. I would have thought the piece of paper would have been kept in the file relating to the investigation papers. I find it hard to believe that a record of the information arising under s. 27 of the Evidence Act and relating to the most important aspect of the case could have been carelessly kept and is now lost.

Then again there is nagging doubt as to how the question was supposely answered by the accused. In Court adult witnesses do not give model answers expected of primary school children. To a question, "What is your name?", the answer will surely be "Ahmad bin Embong", if that is the name of the witness, not, "My name is Ahmad bin Embong." Answers are short and to the point. Most of the answers of the accused were short and to the point. I find the stilted purported answer, "Ganja saya ada simpan dalam semak di belakang rumah" and not just "Dalam semak di belakang rumah" as hardly a natural response in reply to the purported question, "Mana hang ada simpan ganja?"

I have no doubt that ASP Nor Rashid questioned the accused as to the whereabouts of the ganja and that the accused made some answer and that he did indicate that the ganja was kept in the bushes at the back of the house but there is a reasonable doubt created in my mind as to whether the accused gave the answer, "Ganja saya ada simpan dalam semak di belakang rumah" and that he gave it in immediate response to the question, "Mana hang ada simpan ganja"

As to whether the accused led ASP Nor Rashid to the three spots where **cannabis** were discovered I too feel a doubt has been created bearing in mind the evidence of police photographer Abdul Hadi (PW1) who at about 3.45a.m. took photographs of the places where the drugs were located. He was there at the scene at about 1.30 a.m.and he did not see the accused being brought to the back area. It is true the primary purpose of calling the police photographer was for him to testify that he took photographs of the scene and the exhibits but he was there at the scene and the exhibits but he was there at the scene that night. And he was asked as to what he saw. He said that he was requested to be there at the scene and left Sungai Petani at 1a.m. and arrived at the scene at 1.30 a.m. and while he saw the accused (with his hands cuffed to the back) being guarded by Detective Md. Isa he did not see ASP Nor Rashid together with the accused until later when he was called to take photographs of the **cannabis** at the 3 spots. The evidence of ASP Nor Rashid, Inspector Sukiman and Corporal Maidin pointed to their own arrival at the place at about 1.15 a.m. the same night - they said they left Sungai Petani at 1 a.m. and Sungai Petani is from the evidence of ASP Ahmad Razil, the Deputy OCPD (Anti Drug Branch) about 38 miles from the place of incident - and assuming that they did arrive at the scene 15 minutes later - they had to go over the gate, knock the back door of the house, search the ground and upper floors of the house and then come out. ASP Nor Rashid said the accused made the incriminating statement and then led him to the discovery of **cannabis** at about 1.25 or 1.30 a.m. and he said that through his walkie-talkie set, he communicated with the district headquarters (at Sungai Petani) and called for police photographer at 1.30 a.m. who arrived there 10 minutes later. Clearly from his evidence the search of the house took more than 10 minutes and he said the questioning of the accused took 5 to 10 minutes, thus the discovery must have been beyond 1.30 a.m. after the police photographer who stated he arrived at 1.30 a.m. but the police photographer did not see the accused go to the back part of the house.

One other aspect of the alleged discovery puzzles me. The accused led ASP Nor Rashid to 3 spots which the late Inspector Hassan bin Sernek marked on the sketch plan as "A", "B" and "C", the point "A" being the first place of discovery, "B" and "C" being the second and third places of discovery. The police dog discovered **cannabis** at another spot and this spot, according to Inspector Hassan's diary, was near to the spot "B" but a little deeper in the bushes. Now if the accused had admitted that he had hidden the **cannabis** and if he had diligently showed the police all 3 spots "A", "B" and "C", why did he miss the spot (which was later discovered by the dog) which was near spot "B" and which had a huge amount of **cannabis** and instead go to "C" which according to the diary of the late Inspector Hassan was some distance away, some 48 feet away from "B"? Could it be that in fact a police search had revealed the 3 spots but not the spot subsequently discovered by the dog because it was hidden a little deeper in the bushes? Could the story of the accused as supported by the evidence of his daughter be true that someone had gone in to the house at about the time the accused handed his identity card to ASP Nor Rashid and told him that something had been discovered at the back of the house? To my mind there is reasonable doubt too about the prosecution story that it was the accused who led the police to the 3 spots where the **cannabis** were discovered.

The accused had said that Marzuki informed him of the **cannabis** that he had hidden at the back of the premises when the police knocked at the door. The prosecution evidence showed that Marzuki was awake and in the house when the house was searched. The accused had stated that he did not tell the police about Marzuki's information as Marzuki was his son-in-law. The point is that Marzuki, it is not denied, is being detained at Pulau Jerajak for alleged involvement in the drugs seized in this case. There are other shadowy figures whose names have been adduced in evidence. There is Rosli who lived in the small house next to the accused's house and who escaped from custody that very night. He has not been arrested till today. Why did he run? What is his involvement in this case, with Marzuki? There is Bakri bin Khamis, the accused's neighbour who together with the Kampong folk there had free access to the compound of accused's house and it is not denied that the said Bakri is now facing a charge of drug trafficking. The accused had in his cautioned statement stated that about 2 weeks before his arrest one Hassan came to his house and said he wanted him to sell cannabis and he refused to do so. A week later after that visit Hassan again visited him and chatted with him for 15 to 20 minutes. And Hassan is not a fictitious person.

The late Inspector Hassan Sernek went to the house of Hassan and he found him missing. He also looked for 2 other persons, Ishak and Din, in connection with the case to no avail. To date these persons have not been traced.

I think the evidence adduced both by the prosecution and the defence do show some shadowy figures who may have played a role in the hiding or in the trafficking of the cannabis that had been seized in this case. The question arises whether the accused did not know about the **cannabis** as claimed until Marzuki told him about it when the police knocked at the door. Does the fact that he used to return home at Kampong Simpor during weekends, and this was not challenged, indicate it was not likely he could have been involved in the drugs and that indeed Marzuki was the one who informed him of the whereabouts of the **cannabis**? I think this aspect of the case also contributes to the reasonable doubt created in the prosecution's case.

The prosecution adduced the cautioned statement of the accused as part of its case. And as stated earlier the accused in the cautioned statement did not admit to his having hidden the drug or his showing where the drugs were hidden. The defence of the accused is consistent with that cautioned statement produced by the prosecution as part of its case. I must concurrently take that into account when I say that the defence has succeeded in creating a reasonable doubt in the prosecution's case. I therefore acquit and discharge him. All the cannabis seized together with the receptables are forfeited. Rest to the police for disposal.

Also found at [1990] 2 CLJ 825